DIGEST OF OTHER RECENT VIRGINIA DECISIONS.

(Syllabi prepared by M. P. Burks, State Reporter.)

CLENDENNING'S ADMR. v. THOMPSON'S EXOR. AND OTHERS.—Decided at Wytheville, June 13, 1895.—*Harrison*, J:

1. STATUTE OF LIMITATIONS—*Presumption of payment—case at bar.* The statute of limitations, when applicable, presents an absolute bar to the claim asserted. A presumption of payment short of the period of the statutory bar may arise from the lapse of time, the condition of the parties, their relations and dealings with one another, or other cause, but this presumption is a mere rule of evidence, deduced from the ordinary dealings of men with one another, and may be overcome by proof explanatory of the facts relied on in support of the presumption and inconsistent with such presumption. The evidence in this suit supports the presumption of payment, and is not overcome by evidence to the contrary.

LIGHTFOOT'S ADMR. v. GREEN'S EXOR.—Decided at Wytheville, June 13, 1895.—*Cardwell*, J:

1. ASSIGNMENT NOT UNDER SEAL—*Statute of limitations—laches—presumption of payment.* The claim of the complainant was based on a written assignment of a bond, which assignment, not under seal, was made about July 16, 1875. Suit was instituted on this assignment in 1889.

Held: Under the peculiar language of the assignment, and the facts and circumstances of this case, the claim of the complainant is not barred by the statute of limitations, neither has there been such laches on his part, nor was the condition of the parties and their relations to each other such as to raise the presumption of payment.

LOGARIO AND OTHERS v. DOZIER.—Decided at Wytheville, June —, 1895.—*Keith*, P:

1. DEED OF EXCHANGE—*Omission of name of one grantee.* Where a deed of exchange of land is made between two or more persons, and the name of the grantee of one of the parcels of land is omitted, the omission may be supplied and effect given to the deed, if, on inspection of the deed, enough shall appear to show in whom the title to that parcel vested. The deed should be so construed as to give effect to the true intent of the parties, as expressed in the deed, considered in all its parts, and construing the language used according to its common and usual acceptation.

2. DEED OF EXCHANGE—*Omission of name of one grantee—case at bar—reforma-*

tion. In a deed of exchange of land, husband and wife are described as "parties of the second part"; it is declared that *they* are seised of the land conveyed to the party of the first part; that the parties of the first and second parts being seised of their respective lots desire to exchange them, the one for the other, and the usual covenants of title are inserted. Apt words of conveyance are used and the party of the first part is named as grantee of one parcel of the land, but no grantee is named of the other parcel. If the deed alone be looked to, the names of husband and wife should be considered as grantors of the other parcel.

Held: There is no ambiguity in the deed, and it alone can be looked to, in a court of law, as expressing the intention of the parties, and, looking to the deed alone, the husband and wife should be considered as grantees of the other parcel. If by mutual mistake the deed fails to express the intention of the parties thereto, the remedy is by bill in equity to reform the deed.

3. ADVERSE POSSESSION—*Tenants in common.* The possession of one tenant in common, though exclusive, does not amount to a dis-seisin of the co-tenant, nor does the receipt of profits and the payment of taxes amount to an ouster of such co-tenant. A silent possession, unaccompanied by acts amounting to an ouster, or giving notice of an adverse claim, cannot be construed into adverse possession.

PITSNOGLE v. COMMONWEALTH.—Decided at Wytheville, June 20, 1895.—*Keith*, P:

1. CRIMINAL PRACTICE—*Idem sonans—"Bolen" for "Bolden".* Whether or not two or more names are *idem sonans* may be determined by the court, upon a mere comparison, in cases free from doubt; in doubtful cases, or those dependent upon particular circumstances, the question may be submitted to a jury. "Bolen" is *idem sonans* with "Bolden".

2. CRIMINAL PRACTICE—*Indictment—proof.* Proof that the purchaser of a watch paid $30 for it, and that it was represented, when purchased, as a gold watch, is sufficient to sustain a charge in an indictment that a *gold* watch was stolen.

3. CRIMINAL PRACTICE—*Indictment—larceny—embezzlement.* On an indictment for larceny, proof of embezzlement is sufficient to sustain the charge. Section 3716 of the Code.

4. CRIMINAL PRACTICE—*Appellate Court—conflicting evidence—verdict.* Where the evidence in a criminal case is conflicting, the Appellate Court cannot disturb the verdict of the jury as being contrary to the evidence.

CLAIBORNE v. RADFORD AND OTHERS.—Decided at Wytheville, June 20, 1895.—*Keith*, P:

1. CONSTRUCTION OF WRITTEN INSTRUMENTS—*Deed—will—power of attorney.* An instrument which purports on its face to be a deed, is signed, sealed, acknowledged before a notary public, admitted to record, and which grants, bargains, sells and conveys absolutely, and without reservation or condition, all of the stocks, bonds and other evidences of debt of the grantor to a trustee to be held for the